

Whitefish Strategic Housing Plan



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Synopsis

Whitefish community leaders, citizens and stakeholders convened over a six-month period to develop this *Whitefish Strategic Housing Plan*. Its purpose is to address workforce housing needs in Whitefish through a balanced, achievable combination of strategies that:

- Utilize City-owned land and public financing to construct rental housing in the downtown area.
- Offer incentives to develop workforce housing in the downtown area, commercial zones where it is not currently allowed, and existing residential areas where appropriate.
- Require workforce housing to be produced as part of new residential developments as the community grows.
- Provide voluntary ways by which the boarder community can contribute to housing.
- Engage employers, non-profits, and the private sector as partners in workforce housing solutions.

Strategies are grouped into three prioritized tiers based a combination of factors considered by the Task Force – public input, current and future opportunities, funding availability, capacity, potential benefits and challenges. The eight Tier 1 strategies are scheduled for implementation by the end of 2020 and include:

1. Snow Lot Partnership
2. Inclusionary Zoning
3. Annexation Policy
4. Zoning for Affordability
5. Homebuyer Assistance and Rehabilitation
6. Voluntary Assessment
7. Resort Tax (increase or reallocate)
8. Low Income Housing Tax Credit Apartment Development



Table of Contents

Introduction	1
Purpose	1
The Planning Process	2
Open Houses	3
Work Sessions.....	3
Web Presence:.....	3
Task Force	4
Task Force Members	5
Supporting Documents.....	6
Definitions	7
Objectives.....	8
Core Components	9
Capacity and Expertise	9
Guidelines	10
Deed Restrictions.....	10
Inventory Database.....	11
Public Awareness, Education, and Participation	12
Location Criteria	13
Housing Tools	14
Incentives	15
Development Regulations	16
Public/Private Partnerships.....	17
Preservation	18
Public and Non-profit Initiatives	19
Funding	20

Recommended Implementation Strategies	22
Tier 1 Strategies	25
Snow Lot Partnership	25
Inclusionary Zoning	27
Annexation Policy.....	28
Zoning for Affordability	29
Homebuyer Assistance and Rehabilitation	31
Voluntary Assessment	33
Resort Tax.....	34
Low Income Housing Tax Credit (LIHTC) Apartment Development.....	35
Tier 2 Strategies	36
Accessory Dwelling Units	37
Land Bank	38
Short Term Rental - Conversion to Long Term.....	39
Employer Assisted Housing	40
Community Land Trust.....	41
Open Space Reduction in PUD's	42
Commercial Linkage	43
Residential Linkage.....	44
Tier 3 Strategies	45
Supporting Tools	46
Complementary Strategies	46
STR Compliance and Regulations.....	46
New Tax Increment Financing District	48
Roles & Responsibilities.....	49
Organizational Chart.....	50
Strategic Housing Plan Steering Committee.....	52
Legal Analysis.....	53
Follow-Up.....	57
Tracking Progress	57
Updating.....	57

Introduction

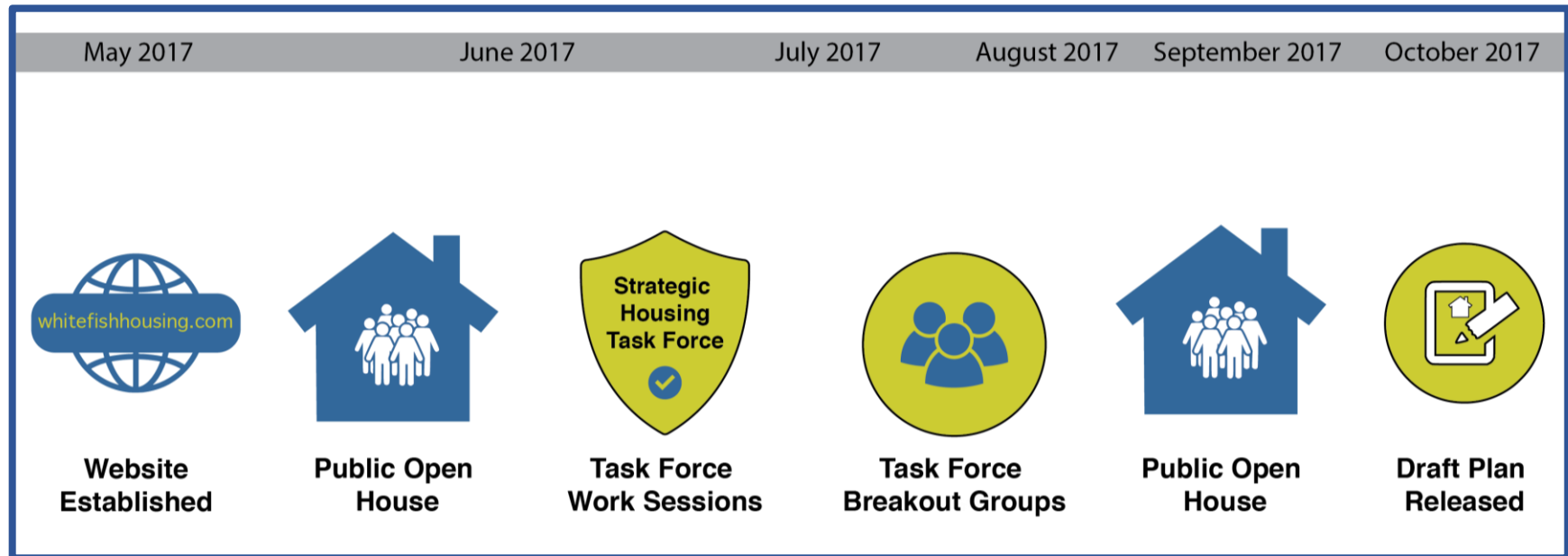
Purpose

This *Whitefish Strategic Housing Plan* creates a step-by-step approach for addressing workforce housing needs identified in the *2016 Whitefish Area Housing Needs Assessment*. It provides objectives, strategies, priorities, funding mechanisms, timelines and responsibilities for implementation.

The focus of this plan is on housing that will be affordable for the local workforce. Some strategies, however, apply to the broader community. The whole community will benefit from implementation of this plan as it will provide housing for a stable labor force to fill essential jobs and sustain Whitefish's economy.



The Planning Process



Creation of this *Whitefish Strategic Housing Plan* took place over six months, from May through October 2017. It involved extensive community engagement, resulting in strategies that will be both effective and appropriate for addressing housing needs in Whitefish.



Public Open Houses

June: Refined the plan's direction and focus, learned about tools used in other mountain west communities and established initial priorities.

September: Reviewed accomplishments, weighed in on objectives, refined priorities and timing through a survey and considered location criteria.

Task Force Work Sessions

Session 1, June 15th: Best practices, strategy identification, initial prioritization.

Session 2, June 16th: Housing needs and plan objectives.

Session 3, September 12th: Core components, timeline, roles and responsibilities, location criteria, objectives.

Task Force Break-out Groups:

July and August; six subgroups of the Task Force developed tools into actionable strategies.

Web Presence:

Whitefishhousing.com provided project documents, a survey, notice of meetings, an opportunity for general comments, and contact information throughout the 6-month planning process.



Task Force

A 26-member Task Force representing small businesses and major employers, City, County and State government, the Whitefish Housing Authority, builders, realtors, property managers and regional housing organizations was instrumental in creation of this plan. Duties included:

- Attending and assisting with at least one of two Open Houses;
- Preparing for and attending three work sessions;
- Participating in at least one Break-out Group;
- Establishing objectives for the Housing Plan;
- Prioritizing housing strategies;
- Learning about financing needs and options;
- Assigning responsibilities for implementation;
- Creating a timeline for achievement;
- Reviewing and commenting on the plan's draft;
- Communicating with their organizations about the issues under consideration and representing their position to the Task Force; and
- Attending City Council meetings.



Task Force Members

Addie Brown	AYS Property Management
Lori Collins	Whitefish Housing Authority
Wendy Compton-Ring	City of Whitefish
Ben Davis	Whitefish Housing Authority
Erin Falcon	Habitat for Humanity
Dave Fern	Montana Housing of Representatives
Rhonda Fitzgerald	Garden Wall Inn
Jason Forrest	Whitefish Mountain Resort
Kevin Gartland	Whitefish Chamber of Commerce
Dan Graves	Whitefish Mountain Resort
Adam Hammatt	Whitefish City Manager
Kristi Hanchett	Whitefish Mountain Resort
Richard Hildner	Whitefish City Councilor
Bob Horne	Applied Communications
Jennifer Howell	Member at large
Marney McCleary	Community Action Partnership NW MT
John Muhlfeld	Mayor, City of Whitefish
Mark Mussman	Flathead County Planning Director
Chuck Stearns	Retired City Manager
Catherine Todd	North Valley Hospital
Thomas Tornow	Tornow Law, Task Force Chairman
Katie Williams	Whitefish City Councilor
Erica Wirtala	NW Montana Association of Realtors

The planning process was coordinated by Kevin Gartland, Executive Director of the Whitefish Chamber of Commerce. Wendy Compton-Ring, Planner for the City of Whitefish, participated in all break-out groups and provided extensive information and support. City staff also provided GIS support and detailed information on resort tax and TIF financing.

Supporting Documents

Materials developed to inform and support the creation of this *Whitefish Strategic Housing Plan*:

- Summarized key metrics from the 2016 Whitefish Area Housing Needs Assessment;
- Described best housing practices utilized in five mountain west communities;
- Identified and defined tools that have been or could be used in Whitefish to meet workforce housing needs;
- Listed key ingredients to successful housing strategies; and
- Recapped housing related policies in adopted City of Whitefish planning documents.

These documents are available at
Whitefishhousing.com

Key Metrics

Tool Matrix

Recipe

Best Practices

Adopted Plan Summary

*2016 Whitefish Area Housing Needs
Assessment*



Definitions

Few widely-used housing terms are universally applied from one community to the next. Definitions vary by type of community and location. In urban areas, “affordable” is associated with low-income housing. In high-cost mountain west communities, however, “affordable” is often applied to housing for moderate and middle-income residents, who cannot afford home prices that are driven up by second home buyers and retirees above what local wages can afford.

Definitions as used in this *Strategic Housing Plan*:

Affordable Housing – When rent or mortgage payments equal no more than 30% of gross household income regardless of the income level of occupants.

Deed Restricted Housing – Residential units that have occupancy limits, and often income and price caps. Limits are imposed through deeds, especially for ownership, but may also be placed on properties through financing agreements and other types of covenants.

Workforce Housing – Units that are deed restricted for occupancy by households that include at least one local employee. Homes in which employees reside but that are *not* deed restricted are part of the free market.

Community Housing – Units where deed restrictions limit occupancy to local residents, without employment provisions.

Tools - Approaches used by communities to provide housing. They vary widely from incentives to funding. In this plan, tools are grouped into six categories.

Strategies – Tools become strategies when unique community issues, opportunities and constraints are considered and a plan of action is created for implementation, as done by the Task Force.

“Affordable housing” is NOT synonymous with “low-income housing” in the mountain west. Many moderate- and middle-income families cannot afford home prices in Whitefish.

Objectives

The *2016 Whitefish Area Housing Needs Assessment* determined that approximately 600 workforce housing units are needed to address current shortfalls and the additional demand that will be generated through the year 2020. This figure represents that gap that the market alone will not address based on current home prices and rents compared with the income levels of residents. It covers zip code 59937 and takes into consideration unfilled jobs, in-commuting employees who want to live in the Whitefish area, projected job growth, and recruitment of additional employees to fill positions vacated by retiring workers.

The goal of this *Whitefish Strategic Housing Plan* is to address workforce housing needs to the extent feasible and appropriate for the community. The pace for development of workforce housing is to be increased over time as capacity, expertise and experience grow.

The plan is based on the following objectives:

- *Own/Rent Mix* – Stabilize the 35% renter/65% owner relationship so that the downward trend in the homeownership rate between 2000 and 2010 does not continue and the community's character as influenced by its mix of owners and renters is preserved.
- *Income Targeting* – Serve the wide range of needs focusing on households with annual incomes up to \$40,000 (80% AMI) for rental housing and \$75,000 (150% AMI) for homeownership.
- *Primary Home/Second Home Relationship* – Stop and, if possible, reverse the 10-percentage point decline between 2000 and 2010 (from 80% to 70%) in the percentage of homes occupied by residents of the community as their primary residence.
- *Jobs/Housing Relationship* – Keep up with job growth and provide more opportunities for in-commuting employees to reside in Whitefish near their jobs; the 395 new jobs anticipated through 2020 will generate demand for 130 additional homes.

These objectives will be revisited when 2020 US Census data become available to measure recent trends.

Core Components

The following core components are required to develop and maintain housing over time that is affordable and appropriate for Whitefish residents.

Capacity and Expertise

To implement the strategies adopted in this document, additional capacity and expertise will be needed. Tasks that must be performed in the future for the recommended strategies to be successfully implemented include:

- Coordinating among the agencies responsible for implementing strategies;
- Fostering and overseeing public/private partnerships to build new housing;
- Providing technical assistance to employers to help them provide additional housing for their employees;
- Establishing guidelines and deed restrictions that cover a diverse inventory of workforce housing produced through a variety of strategies;
- Communicating with community groups and public officials about who resides in workforce housing and the many economic and community benefits of workforce housing, addressing misperceptions as they arise;
- Developing and administering local funding initiatives and seeking financial assistance from regional, state, federal and non-profit sources;
- Acquiring sites for future housing development; and,
- Managing community and workforce units over time including inventory database design and updating, deed restriction compliance, property maintenance, renter and homebuyer selection, and unit turnover.

Guidelines

Clear, concise guidelines are needed to develop and operate workforce housing. Guidelines are developed incrementally, evolve over time and are amended as appropriate. They can be referenced in code “as may change from time to time” to reduce the complexity and time required to make modifications. They provide information needed to comply with development regulations, own or rent homes, and manage units over time. Guidelines should explain:

- Housing goals and objectives;
- The City’s development regulations and procedures in plain language;
- Housing plan requirements that must be submitted with development applications;
- Incomes categories;
- Allowable rents and sale prices;
- In lieu fee methodology and annual fee updates;
- Unit types, sizes, quality standards, HOA allowances, covenant restrictions; and
- Deed restrictions (see below).

Deed Restrictions

Standardized deed restrictions with fill-in-the blank provisions are needed for housing produced through the many strategies to be used in Whitefish. Deed restrictions should be uniform to the extent possible, and should ensure permanent affordability. Project-by-project rules are time consuming, expensive to manage over time, subject to charges of inequity, and difficult for realtors, property managers, title companies, buyers and renters to understand. Deed restrictions should cover:

- Eligibility criteria – income, residency, employment, and/or other qualifications;
- Marketing process and period for resale;
- Option to purchase/1st right of refusal;
- Initial price and resale price calculation method;

- Appreciation limits;
- Capital improvement policy;
- Agreement to maintain home in good condition;
- Excessive damage charges;
- Owner occupancy requirements;
- Rental allowances and restrictions;
- Default/foreclosure procedures including survivability of affordability/occupancy limitations.

Inventory Database

A comprehensive database should be developed to monitor and manage the inventory of deed-restricted housing as it is developed. This information should be readily available to evaluate the supply as it grows and to determine to what extent it serves the changing needs of residents. Database fields should include:

- Project name and address;
- Number of restricted and market units;
- Type of occupancy restriction;
- AMI restriction;
- AMI of occupant;
- Date built;
- Initial sale price and resale prices;
- Rents;
- Number of bedrooms;
- Square footage;
- Amenities;
- Type and value of improvements made;
- Household size and composition; and
- Jobs held by residents.



Public Awareness, Education, and Participation

Communities are often so immersed in the development of housing and its ongoing operation that they do not adequately share information in a manner that is readily understood and used by consumers of workforce housing and the community at large. In Whitefish, the public is highly engaged and influential. A system is needed to facilitate engagement, provide ongoing opportunities for comment, respond to concerns, and report on housing successes.

A website is key. Good sites provide:

- A one-stop-shop for sellers and buyers of deed restricted homes;
- Information on housing properties that have been developed – photos, locations, number of homes, basic qualification criteria;
- Updates on proposed and under-construction projects that will offer new homes;
- FAQ's on owning and renting deed restricted properties;
- A single pre-application that can be screened by staff with knowledge of homeownership and rental opportunities to match residents seeking housing with the right resources;
- A copy of the basic template deed restriction for ownership and rental units;
- A rental clearinghouse where property managers can list available units;
- The tie between economic health and housing since housing that is affordable for the labor force is a key ingredient of a sustainable economy; the interconnectedness of the local economy with adequate housing for the workforce should be regularly articulated;

- Measurements of the community benefits of workforce housing including the jobs held by residents and their other contributions to the economy and broader community;
- Documents such as this *Whitefish Strategic Housing Plan*, *2016 Whitefish Area Housing Needs Assessment*, recent development proposals etc.; and
- Notifications on public meetings and other opportunities to participate in and comment on Whitefish's workforce housing efforts.

Location Criteria

Workforce housing in Whitefish should be dispersed throughout the community and compatible with the prevalent neighborhood development patterns that have been developed over time. It should not be concentrated in one or a few areas of town. Workforce housing should be:

- In mixed-income neighborhoods where most homes are primary residences;
- In new subdivisions and areas annexed into the City;
- In downtown development and redevelopment projects; and
- In commercial zones where it can improve utilization of property and serve as a buffer between business uses and lower-density neighborhoods, provided potential safety/compatibility concerns are addressed.

Workforce housing should be convenient to jobs, shopping, schools, transportation, parks and bike paths.

Housing Tools

This *Whitefish Strategic Housing Plan* is built upon tools used in communities throughout the mountain west to address workforce housing needs. Tools were identified and defined at the first public Open Housing and in the first Work Session of the task force. They were organized into six categories with the recognition that there is often overlap, and that tools are frequently used in combination in implementation strategies.

These tools are described in detail in the *Tool Development Worksheets* provided in the appendix to this plan. The worksheets identify issues in general and specific to Whitefish. Definitions for each of the 35 tools that were considered in creation of this plan are provided below.



Incentives



**Development
Regulations**



**Public-Private
Partnerships**



Preservation



**Public and Nonprofit
Initiatives**



Funding



Incentives

- Zoning for Affordability -- Allowing small lots for modest/tiny houses, live/work opportunities, multi-family housing by-right in all or most zones, and removing regulatory barriers that are no longer appropriate for the community. Code revisions are often needed to align regulations with the desired outcome of increasing the supply and diversity of housing choices for the workforce.
- Flexible Development Standards enable a community to modify land use regulations in exchange for housing for community residents at prices they can afford.
- Accessory Dwelling Units (ADUs) -- Second smaller residential units sharing a lot with a single-family or townhome residence. Some examples of ADUs include an apartment over a garage, a tiny house in the backyard, or a basement apartment.
- Density Bonus -- Providing addition density or floor area ratio (FAR) in exchange for workforce housing. The bonus must be large enough to entice development yet small enough for livability and compatibility.
- Fee Waivers -- Water/sewer tap fees, building permit fees or other charges waived in part or whole to reduce the cost to build workforce housing. General funds or other source need to cover cost of fees waived.





Development Regulations

- Inclusionary Zoning (IZ) requires that new residential subdivisions/PUD's include units that are deed restricted for workforce or community housing. Options for compliance can include building homes on-site, building or purchasing off-site units, dedicating vacant land, providing subdivided lots or providing a cash contribution to a housing fund (fee in lieu).
- Annexation Policies give municipalities broad discretion to require that housing be provided in exchange for the provision of services. Negotiating deed restricted housing as part of annexation agreements is a widespread practice among municipalities with workforce housing programs.



- Residential Linkage requires builders of new homes to contribute to workforce housing relative to demand generated by residential units. A nexus is needed.
- Commercial Linkage requires new commercial development to provide housing for a portion of employees generated by the development. A nexus is needed.



Public/Private Partnerships

- Public Land - Using publicly-owned vacant and under-utilized land for workforce housing to catalyze development, make it financially feasible and provide public oversight to achieve the type, amenities, and price point of housing needed.
- Employer Assisted Housing (EAH) -- Providing housing units, help finding housing, down payment funds, rent/mortgage subsidy, master leasing of rental units, or relocation assistance. Employers can provide land and partner in development of new housing.
- Property Management – Contracting to manage rental units – the public sector hires private firm or private sector hires public/non-profit. Could be used with employer assisted housing and conversion of short-term rentals to long-term rentals.
- Workforce Housing with No Income/Price Restrictions -- Providing workforce housing with few restrictions other than employment, which allows developers to charge what local residents can bear; “lite” deed restrictions are typically placed on higher-priced homes for middle- to upper-income residents, excluding purchase for second/vacation homes.



Preservation

- Home Buyer Assistance - Down payment or mortgage buy down assistance in the form of grants or second mortgages to assist qualified buyers to purchase market or deed restricted homes.
- Conversion of Short-term Rentals into Long-term Rentals - Cities and resort communities across the country have become increasingly concerned about the loss of long-term rentals from conversion into short-term rentals (STRs), and are exploring/attempting ways to provide incentives for property owners to convert units that were vacant or rented short-term into long-term rentals for local households. (Also see following section on Complementary Strategies for STR Compliance.)
- No Net Loss Policy - Requiring replacement of housing occupied by the workforce when redevelopment occurs.
- Acquisition of Market Units – Purchasing units, usually using one or more sources of public funds, and either renting them to workforce households, or re-selling units at a lower price point in exchange for a deed restriction.





Public and Non-profit Initiatives

- Community Land Trust (CLT) – A community, regional or statewide nonprofit owns land, develops housing and provides long-term oversight for permanent affordability through land leases and often deed restrictions.
- Rehabilitation and Weatherization - Programs to repair, update, and improve energy efficiency in existing homes occupied by low income households.
- Habitat for Humanity and Self Help Build – Ownership programs utilizing sweat equity, low interest loans, and volunteers to build homes.
- Senior Housing - High density, smaller, low maintenance, rental or ownership units designed for retiring employees that are age restricted built to free up larger homes for families. A method is needed to entice retirees to sell their homes to workforce households.
- Land Banking - Acquiring land for housing through purchase, trades, or in-lieu requirements.
- Public Sector Development - Initiating, designing, financing and constructing homes by municipalities, counties and/or housing authorities.
- Co-op or Co-housing - Common ownership and management of purpose-built communities.

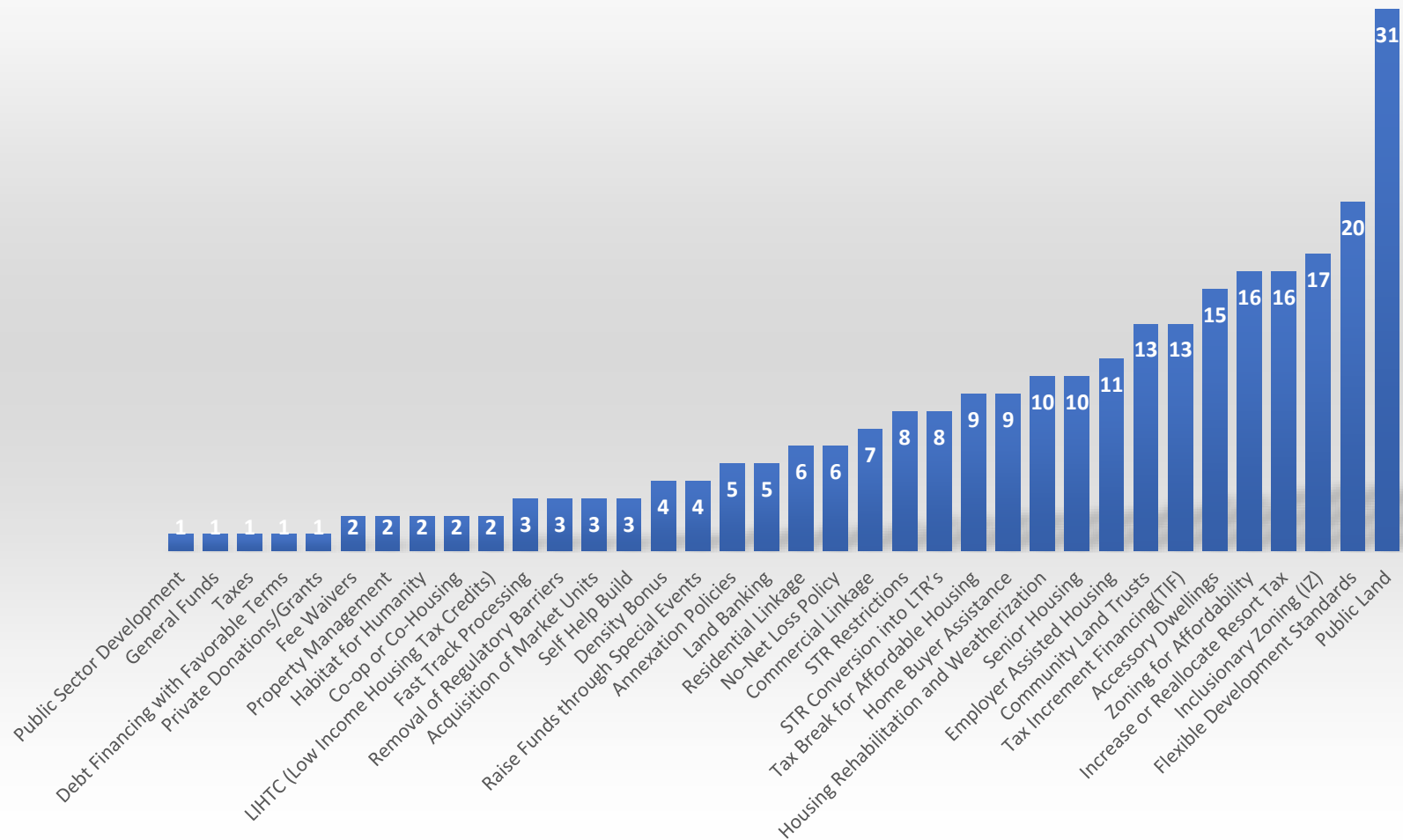




Funding

- Resort Tax- A resort tax of up to 3% is allowed in Montana for communities that meet certain population and economic conditions.
- Tax Increment Finance (TIF) -- A finance tool used by local jurisdictions to invest in public improvements and stimulate economic development. Housing can be an allowable use for new property tax in urban redevelopment districts.
- Voluntarily Assessment on Retail/Services/Real Estate - A voluntary collection in lieu of a tax.
- Low Income Housing Tax Credits (LIHTC) -- A federal program that creates an incentive to finance *rental* housing for low-income households. Credits are allocated through the Montana Board of Housing, Housing Division of the Montana Department of Commerce, and are highly competitive. LIHTC projects could potentially be exempt from property taxes.
- Private Donations/Grants --Tax deductible contributions to a non-profit organization.
- Impact Fees - A fee directly linked to the need for housing generated by new development through jobs created.
- Raise Funds through Special Events -- Fundraising events, with net proceeds dedicated to a workforce housing fund.
- Taxes -- Sales, property, lodging, real estate transfer, excise tax. State legislation needed in Montana, and voter approval likely required. Revenue stream can be used for most housing-related activities. Approval requires extensive public education.

Initial Tool Prioritization



Note: Tools that did not receive any priority votes were excluded.

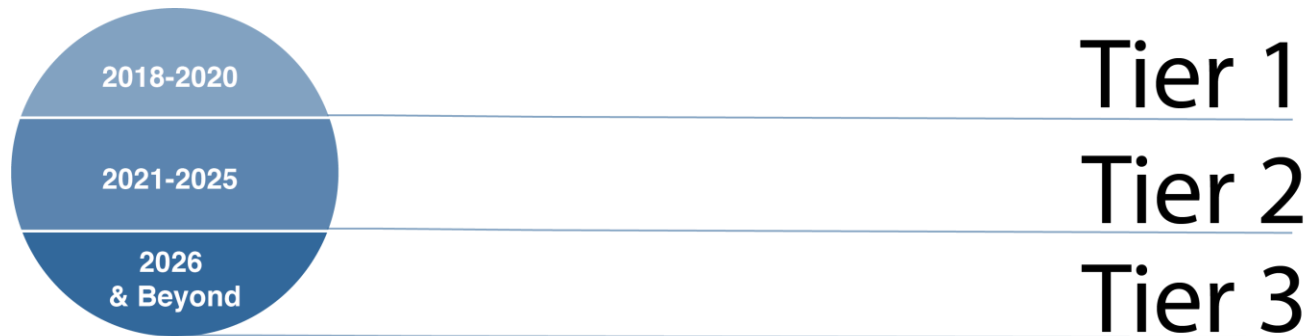
Recommended Implementation Strategies

Priorities, Tasks, and Timing

This *Whitefish Strategic Housing Plan* will comprehensively address workforce housing needs in Whitefish through a balanced combination of strategies that:

- Utilize City-owned land and public financing to construct rental housing in the downtown area.
- Offer incentives to develop workforce housing in the downtown area, commercial zones where it is not currently allowed, and existing residential areas where appropriate.
- Require workforce housing to be produced as part of new residential developments as the community grows.
- Provide voluntary ways by which the broader community can contribute to housing.
- Engage employers, non-profits, and the private sector as partners in workforce housing solutions.

Strategies are grouped into three tiers based a combination of factors considered by the Task Force – public input, current and future opportunities, funding availability, capacity, potential benefit and challenges.



These tiers were developed by the Task Force and adjusted through a survey conducted at the second Open House. A total of 40 surveys were completed. While these responses do not fully represent the larger Whitefish community, they suggest strong support for the plan and increasing the pace of implementation. Key findings from the survey:

- Little change was suggested in Tier 1 and Tier 3 priorities.
- Many respondents suggested moving up implementation of Tier 2 strategies into the 2018 through 2020 time-frame. The following five strategies received 15 or more recommendations for being moved to Tier 1:
 - STR - Conversion to Long Term
 - Employer Assisted Housing
 - Fast Track Process for Workforce Housing
 - Low Income Housing Tax Credit (LIHTC) Apartment Development
 - Accessory Dwelling Units
- Very few respondents indicated that strategies should be delayed.
- Of the 38 strategies covered by the survey, the following strategies received one or two responses indicating they should be eliminated; responses suggesting elimination are shown in ().
 - Inclusionary Zoning (1)
 - Incentives -- downtown redevelopment projects (1)
 - Resort Tax -Increase/Reallocate (2)
 - Fast Track Process for Workforce Housing (2)
 - Open Space Reduction in PUDs (1)
 - Residential Linkage (1)
 - Relocatable Housing (2)

For greater detail on individual strategies, please refer to the *Tool Development Worksheets* appended to this document.



Tier 1 Strategies

The schedule for Tier 1 kicks off before the end of 2017 and escalates through 2019. Initial implementation will be completed on all Tier 1 strategies by the end of 2020, yet many of the strategies will operate into the future.

Tier 1 - Strategies	2017	2018				2019				2020			
	Q 4	Q 1	Q 2	Q 3	Q 4	Q 1	Q 2	Q 3	Q 4	Q 1	Q 2	Q 3	Q 4
Snow Lot Partnership													
Inclusionary Zoning													
Annexation Policy													
Zoning for Affordability													
Homebuyer Assistance & Rehabilitation													
Voluntary Assessment													
Resort Tax (Increase/Reallocate)													
Develop LIHTC Apartments													

Snow Lot Partnership

The Snow Lot has long been identified as a site suitable for housing in the downtown area, and emerged as a top strategic priority in the action planning process. A portion of the 1.64 acres may be public right-of-way. The land use designation is 'Urban' but the zoning is still Industrial. Adjacent/nearby land owned by BNSF could potentially be housing sites and developed concurrently or symbiotically with the Snow Lot. It is just outside the TIF boundary. An alternative location for snow storage and competing uses are concerns.

Implementation Recommendations

Over the next year, create a public/private partnership to develop the Snow Lot for 30 to 40 workforce housing rental units based on the following **Guiding Principles**:

- Serve a diverse mix of locally employed households, with incomes ranging from 50%-100% AMI;
- Be attractive and compatible with the existing neighborhood;



**Public-Private
Partnerships**

- Be responsive to local housing needs and preferences identified in the 2016 HNA,
 - Provide a mix of unit sizes, with an emphasis on one bedrooms,
 - Set a standard for future public/private partnerships for workforce housing;
 - Allow the City to retain long-term ownership of the land;
 - After initial public investments, be financially self-sufficient over time;
 - Contribute to the goals of the Downtown Plan, including the housing, transportation, economic, and aesthetic recommendations; and
 - Be a long-term asset to the community, and a source of pride for residents and neighbors.

Tier 1 - Actions & Implementation Steps	2017	2018					2019				2020			
	Q 4	Q 1	Q 2	Q 3	Q 4	Q 1	Q 2	Q 3	Q 4	Q 1	Q 2	Q 3	Q 4	
Snow Lot Partnership														
Explore adjacent land opportunities														
Understand site capacity and constraints														
Amend TIF boundary & approve budget														
Issue RFP for development partner														
Design														
Land use approvals														
Project financing														
Construction														



Inclusionary Zoning

Whitefish has long had a “voluntary” IZ program through which a bonus density is provided if 10% of units are deed restricted. It has produced only 8 units to date (2 owner occupied and 6 apartments) with 4 more apartment units approved. Potential within existing City boundaries appears to be sufficient for IZ to make a significant impact. Approximately 240 acres within the City have residential zoning and could be subdivided and nearly 900 acres could be assembled for residential development that would be subject to IZ.



Development Regulations

Implementation Recommendations

- Make IZ mandatory with a minimum of 20% to 25% of homes in new subdivisions deed restricted for long-term affordability.
- Place a strong preference for development of units on site to disperse deed restricted housing through the community rather than payment of in-lieu fees. Fees should be allowed if the subdivision/PUD location is inappropriate.
- Require a housing mitigation plan that details compliance methods including on-site and off-site development, land and fees.
- Create requirements for small subdivisions where less than 1 unit would be required. Accessory dwelling units or fees-in-lieu could be used to satisfy the requirement.
- Make deed restricted housing compatible with market homes, generally similar in appearance and of sufficient quality that is appropriate for Whitefish.
- Target households with incomes in the moderate and middle-income ranges - 80% to 150% of the Area Median Income (AMI).
- Do not incorporate a density bonus.

Tier 1 - Actions & Implementation Steps	2017	2018				2019				2020			
	Q 4	Q 1	Q 2	Q 3	Q 4	Q 1	Q 2	Q 3	Q 4	Q 1	Q 2	Q 3	Q 4
Inclusionary Zoning													
Form advisory committee													
Hire consultant													
Develop unit standards & compliance options													
Develop & adopt ordinance													
Administer and Evaluate													

Annexation Policy

A primary purpose of the recommended annexation policy is to preserve the Whitefish community as it grows with the goal to reverse the trend toward more second homes relative to primary residences occupied by locals. Second homes increased 10 percentage points between 2000 and 2010. Annexations of land for residential development offer the single largest opportunity to stabilize the relationship between primary and second homes.



Development Regulations

Implementation Recommendations

- Develop and adopt annexation policies requiring that 75% to 80% of homes developed on properties annexed into Whitefish in the future be deed restricted for occupancy by local residents.
- Match the requirements for fully deed restricted workforce housing to the IZ requirements.
- Use “lite” deed restrictions on the portion of the homes between the IZ percentage and the 75% to 80% overall goal. This restriction would limit occupancy to residents but not restrict income, employment or price.
- Amend the 2009 *Extension of Services Plan* to include the annexation policy for housing.
- Allow flexibility in meeting the requirements including real estate transfer assessments (RETA's) and off-site development.

Tier 1 - Actions & Implementation Steps	2017	2018				2019				2020			
	Q 4	Q 1	Q 2	Q 3	Q 4	Q 1	Q 2	Q 3	Q 4	Q 1	Q 2	Q 3	Q 4
Annexation Policy													
Draft policy statement													
Develop criteria for compliance options													
Amend 2009 Extension of Service Plan													
Create "lite" deed restriction													
Administer and Evaluate													

Zoning for Affordability

Code revisions are needed to help align regulations with the desire to increase the supply and diversity of housing choices for the workforce. Zoning for affordability allows and encourages housing development by the private sector, public/private partnerships, and non-profits. It removes unintentional barriers that may exist. City of Whitefish codes dating from the early 1980's prohibit housing in most commercial zones, require excessive parking for smaller residential units (2.3 spaces per unit regardless of size) and generally exclude small units.



Incentives

Implementation Recommendations

- Allow deed restricted housing by right in the Highway 93 South corridor provided it meets occupancy, design, price, and safety criteria. Free market housing should be allowed through PUDs and/or CUPs.
- Allow deed restricted housing in the Wisconsin corridor by right or as a conditional use.
- Change parking requirements for residential units to be based on unit size (# of bedrooms). The standard should be reduced but may vary based on location. Provide opportunities for further parking reductions in downtown.
- Waive impact fees using TIF or other funding source for deed restricted housing units in downtown projects.
 - Create a fast-track process for workforce housing projects through which applications proposing a minimum number of deed restricted units are expedited to the extent allowed under state-mandated processing times. Fast track processing does not involve skipping any review steps or public comment.
 - Provide opportunities for tiny homes in Whitefish. Standards like those for mobile home parks could be applied. A new zoning district, a zoning overlay, new subdivisions and PUDs could be used to provide sites for tiny homes.



Tier 1 - Actions & Implementation Steps	2017	2018				2019				2020			
	Q 4	Q 1	Q 2	Q 3	Q 4	Q 1	Q 2	Q 3	Q 4	Q 1	Q 2	Q 3	Q 4
Zoning for Affordability													
Allow deed restricted housing in commercial zones													
Work w/owners along Hwy 93 South and Wisconsin													
Draft & adopt code changes for subdivisions & PUDs													
Update Parking Standards													
Research alternative parking standards													
Choose methodology w/public process													
Draft & adopt parking ordinance													
Incentives for workforce housing downtown													
Apply for TIF allocation to waive impact fees													
Work w/ development applicants													
Fast tract process for deed restricted housing													
Pursue opportunities for tiny homes													



Homebuyer Assistance and Rehabilitation

Existing homebuyer assistance and rehabilitation/weatherization programs should be continued and enhanced with a goal to serve more workforce households by improving utilization and available financial and technical resources.

Implementation Recommendations

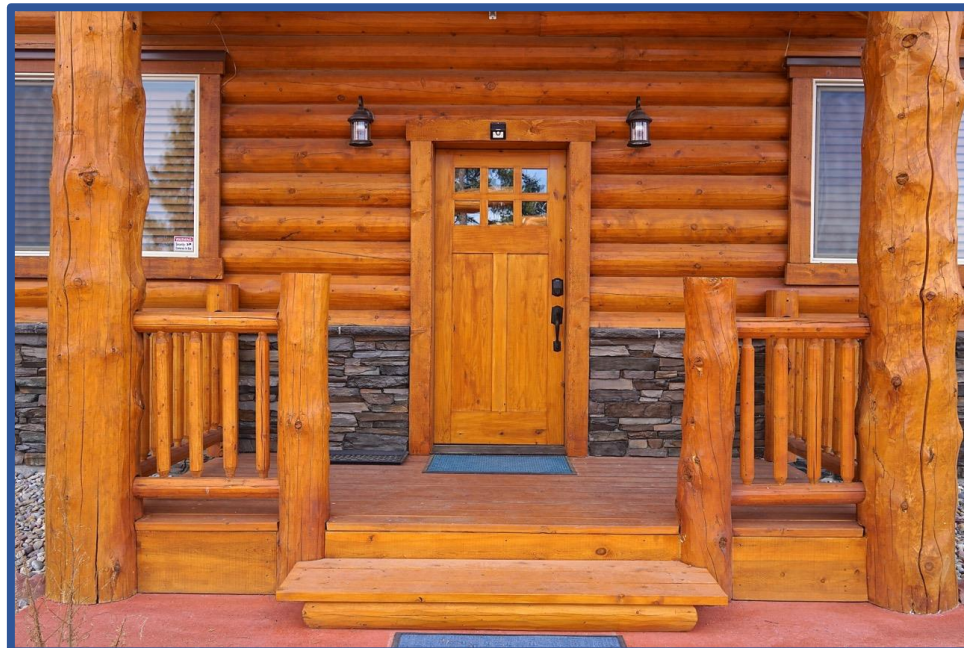
- Grow the existing deed restricted homeownership program at the Whitefish Area Land Trust by pursuing acquisition, rehab, and re-sale of three to five homes over the next five years.
- Research and monitor the amount of funding available for homebuyer programs serving Whitefish and pursue supplemental grants if needed.
- Use flexible funding sources to extend income eligibility to 120% AMI for purchase of market housing, as done under one CLT program.
- Create a multi-agency, one-stop shop for homebuyer assistance and rehabilitation programs.
 - Website with regulations and processes explained succinctly. WhitefishHousing.com website could be used.
 - Pre-application to determine the assistance for which a household may qualify.
 - Database on inquiries (very helpful in planning future programs and rallying community support).
- Develop/maintain a pool of pre-qualified homebuyers (and renters) to inform development decisions and assure developers that homes built through IZ and other tools will sell/lease.
- Access existing credit counseling and homebuyer training through CAPNM.
- Conduct training on deed restriction.
- Design and deliver seminars for banks, mortgage brokers, realtors, title companies on homebuyer assistance.



**Public and
Nonprofit
Partnerships**



Tier 1 - Actions and Implementation Steps	2017	2018				2019				2020			
	Q 4	Q 1	Q 2	Q 3	Q 4	Q 1	Q 2	Q 3	Q 4	Q 1	Q 2	Q 3	Q 4
Homebuyer Assistance & Rehabilitation													
Seek funding													
Create agreements w/ regional/state organizations													
Create a one stop shop													
Conduct marketing/outreach													
Design and deliver training													
Establish/maintain pre-qualified buyer pool													



Voluntary Assessment

A voluntary assessment for workforce housing would provide the opportunity for broad community participation in housing solutions and generate needed funding. It would function similarly to sale tax but on a voluntary basis following the successful model created to collect tourism promotion funds. For the tourism promotion fund a consensus was built and contracts were put in place with participating businesses. The assessment could apply to retail, services and real estate, and potentially be applicable to more services than the resort tax. A voluntary assessment would be an alternative to expansion or reallocation of the resort tax and should be attempted before re-authorization of the resort tax in 2021. Modeling rates, applicability and revenue generation potential is needed.



Funding

Implementation Recommendations

- Discuss a voluntary assessment with businesses and realtors to determine the level of support for the initiative and, if support seems sufficient, how it might best be structured.
- Develop assumptions and spreadsheet to model various rates and applicability to estimate potential revenue.
- Negotiate agreements to charge and collect the assessment.

Tier 1 - Actions & Implementation Steps	2017	2018				2019				2020			
	Q 4	Q 1	Q 2	Q 3	Q 4	Q 1	Q 2	Q 3	Q 4	Q 1	Q 2	Q 3	Q 4
Voluntary Assessment													
Breakfast for business community													
Outreach to Business Leaders													
Model rate & applicability options													
Negotiate contracts													
Administer and Evaluate													

Resort Tax

A reallocation of the resort tax when reauthorized, or an additional 1% tax if allowed by the Montana legislature, could provide a local revenue source for workforce housing. The local electorate decides on the rate, duration and allocation of tax proceeds. The tax is applied as a percentage of goods, services, lodging, bars, restaurants, entertainment and luxury goods. If resort tax revenues become available, they may be used to develop both ownership and rental housing as well as operate other housing programs.



Funding

Implementation Recommendations

- Engage in community discussion leading up to the 2021 vote for local reauthorization of the resort tax.
 - Advocate for workforce housing as a priority for funding;
 - Coordinate with community conversations about changes in funding streams in coordination with TIF expiration and new potential districts.
- Monitor State Legislative actions – advocate for additional resort tax of 1%, if put forward again.
- Support opportunities for reallocation and broader collection, both locally and state-wide, and through the Local Option Tax at the State Legislature.

Tier 1 - Actions and Implementation Steps	2017	2018				2019				2020			
	Q 4	Q 1	Q 2	Q 3	Q 4	Q 1	Q 2	Q 3	Q 4	Q 1	Q 2	Q 3	Q 4
Resort Tax (Increase/Reallocate)													
Advocate for housing in reauthorization; Advocate for reallocated and broader collection													
Monitor State Legislative Actions re: adtl 1%													

Low Income Housing Tax Credit (LIHTC) Apartment Development

Opportunities to attract and support a LIHTC development in Whitefish should be pursued in the next five years, recognizing that the City of Whitefish will be a key partner in helping a development prevail in a highly competitive process. LIHTC is a federal program that creates an incentive to finance *rental* housing for households below 60% AMI. Projects effectively utilizing the LIHTC usually range from 30 to 100 units, and may be sponsored by a for profit, non-profit, or housing authority. Credits are allocated through the Montana Board of Housing and are highly competitive. LIHTC can generate 30% to 70% of the total cost to develop a housing site, often bringing several million dollars of outside investment to local housing solutions. LIHTC will be opportunity driven. Staff time and financial resources will be needed to vet opportunities and pursue partnerships.

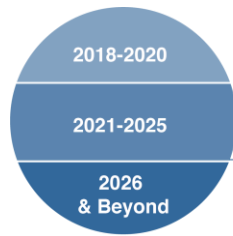


Funding

Implementation Recommendations

- Evaluate interested developers (their experience and proposed plans) before providing endorsement.
- Determine if a partnership is needed.
- Consider forming a non-profit for project ownership for property tax exemption.
- Stagger timing of apartment projects to allow the market to absorb the new rentals – do not build simultaneously.

Tier 1 - Actions and Implementation Steps	2017	2018				2019				2020			
	Q 4	Q 1	Q 2	Q 3	Q 4	Q 1	Q 2	Q 3	Q 4	Q 1	Q 2	Q 3	Q 4
Develop LIHTC Apartments													
Explore interest with developers; seek partnerships													
Organize support; address neighborhood concerns													
Endorse applications to Montana Housing Board													



Tier 2 Strategies

Tier 2 Strategy Timeline					
	2021	2022	2023	2024	2025
Accessory Dwelling Units					
Land Bank					
Short Term Rental - Conversion to Long Term					
Employer Assisted Housing					
Community Land Trust					
Open Space Reduction in PUD's					
Commercial Linkage					
Residential Linkage					

Accessory Dwelling Units

Updating the requirements associated with Accessory Dwelling Units (ADUs) could increase opportunities for housing units dispersed throughout existing neighborhoods. Currently, about five ADU permits are issued in Whitefish each year. Conditional use permits (CUPs) are required, which take two to three months. Roughly 60% of ADU permits are issued to non-local owners. The maximum size is 600 sq. ft., and the unit must be on one level.

Many residential lots are large with room for ADUs. Setbacks and lot coverage limits from underlying zoning apply. ADUs can only be rented long term if primary residence is owner occupied. A second home owner cannot rent out their ADUs to local caretakers or others. ADUs can be used as STRs in certain districts.

Implementation Recommendations

- Allow ADUs by right in R-1, 2, 3 and 4 zones if deed restricted for occupancy by local residents. Continue to require CUPs for ADUs that are not deed restricted.
 - Allow existing units to be rented long term, lifting the limitation allowing long term rental only when the primary unit is a primary residence.
 - Eliminate the single-level requirement and allow detached units.
 - Encourage new subdivisions to incorporate ADUs that are deed restricted for community residents through revision to subdivision regulations. Waive impact fees if a revenue source can be identified. Consider options for providing property management services to encourage property owners to rent their ADUs long term.
 - Create a compliance monitoring and complaint resolution process.



Development Regulations

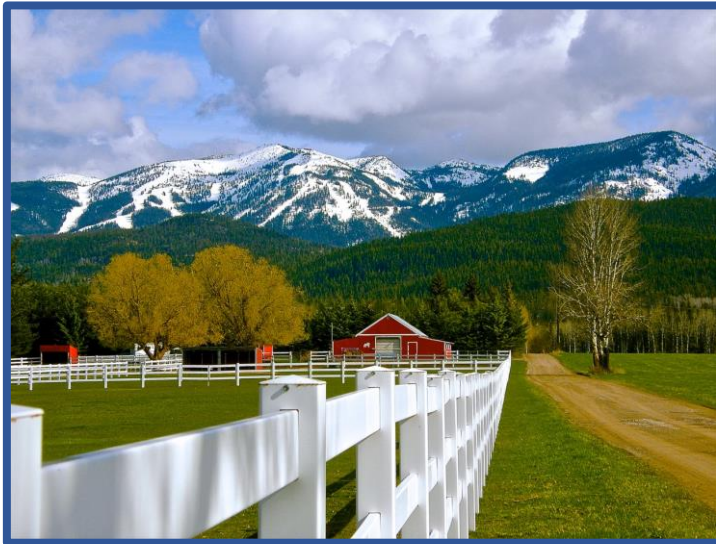
Land Bank

Public or non-profit control of land for residential development is a key ingredient for workforce housing. Using publicly-owned land for housing can catalyze development and provide public oversight to achieve the type, amenities, and price point of housing needed. There are multiple parcels in Whitefish in addition to the Snow Lot that could potentially be developed as workforce housing.

Land banking efforts work well when the responsible agency is poised to act quickly when the right parcel comes on the market. Public ownership of land can reduce long-term carrying costs if the entity is exempt from property taxes.



**Public and Nonprofit
Initiatives**



Implementation Recommendations

- Evaluate parcels owned by the City and other public/non-profit entities in Whitefish that is vacant or under-utilized for its suitability for workforce housing and, if found to be the most appropriate use, reserved for future housing development. Create a map with parcel information. Involve the City's Real Estate Committee in this process.
- Explore possible partnerships with the School District, Flathead Electric and North Valley Hospital.
- Create public or tax exempt non-profit organization to accept donations of land and hold them until developed for housing.
- Identify funding sources.
- Identify privately owned parcels for potential acquisition and reach out to property owners.
- Pursue opportunities as they arise.

Short Term Rental - Conversion to Long Term

Efforts to better enforce existing STR rules are currently underway. The inventory of STRs that might be converted into long-term rentals will be better understood by spring 2018. A conversion program could provide an incentive to rent homes long term that have been rented short term in violation of existing regulations. These efforts in tandem could serve as the “carrot and the stick.”

Implementation Recommendations

- Determine potential inventory for short-term rental to long-term rental conversion using data on short-term rentals compiled during the City’s 6-month program aimed at increasing compliance with existing regulations.
 - Develop a business plan with goals, budget, operating procedures and marketing plan.
 - Strive for multi-year lease commitments from property owners.
 - Adapt the best parts from Summit County’s pilot program, minimize bureaucracy, simplify, assume no City liability.
 - Use applicable provisions from lease, inspection and occupancy agreements.
- Investigate options for property management including contracting with established property managers or the Housing Authority.
 - Work with property managers to design the program; pursue opportunities for a discounted fee. A typical of the rate charged for workforce housing properties is approximately 8%.
 - Fund raise (City, banks, foundations). Address concept that property management cost (about \$2500/unit in Summit County) is “going out the door.” Per unit cost for providing rental units is far lower than development subsidies for new construction.



Preservation



Employer Assisted Housing

When employers are unable to fill jobs due to the lack/cost of housing, they may provide housing units and other housing support to employees. Of employers surveyed in 2016, 23% provide some type of housing assistance to their employees. Employers can provide land and partner in development of new housing, or provide direct support to the employee: help finding housing, down payment funds, rent/mortgage subsidy, master leasing of rental units, or relocation assistance.

Implementation Recommendations

- Understand employers needs/interests – host a seminar through the Whitefish Chamber.
- Create packet/educational materials on what employers can do:
 - Master lease opportunities.
 - Match-making opportunities between landlords and employees.
 - Mortgage/down-payment assistance.
 - Housing search for employees identify resources that could make it easier, such as a One-Stop-Shop
 - Voluntary Assessment (See Tier 1 strategy).
- If employers are interested, facilitate partnerships to master lease and/or coordinate property management.



**Public-Private
Partnerships**



Community Land Trust

Northwest Montana Community Land Trust (NWMTCCLT) has expertise and is active in the region though has yet to work in Whitefish. The Whitefish Area Land Trust (WALT) was established as an arm of the Whitefish Housing Authority in 2008. It has provided homeownership assistance with 10 deed restricted homes now in its portfolio that have housed 14 families using \$500,000 in CDBG and HOME funds to provide an average subsidy of \$117,000 per unit. A traditional CLT land lease approach has not been used. The program is not currently growing, but could be re-energized if new funding sources are found. NeighborWorks MT could serve CLT households with incomes up to 120% AMI.

Implementation Recommendations

- Establish relationships with NWMTCCLT and NeighborWorks to bring resources into Whitefish.
- Evaluate WALT's existing homeownership program including deed restrictions and capital improvement practices. Adopt changes if needed.
- Pursue traditional funding sources such as CDBG and HOME, as well as new sources that could be used to purchase more expensive homes and serve higher income households.
- Seek opportunity through annexations for a CLT neighborhood development with a goal for 20 homes for moderate income households in 5 years.



**Public and Nonprofit
Initiatives**



Open Space Reduction in PUD's

Reducing open space requirements in PUD's is a type of flexible development standard that could be appropriate for Whitefish given the number and location of parks and trails within the community and proximity of public lands. Design quality, compatibility, safety, and neighborhood concerns must be considered in the creation of flexible development standards.

Implementation Recommendation

- Consider allowing reductions in 20% open space requirement for workforce housing or flexible options (fee off site, transfer credits, fee in-lieu) for satisfying the requirement in the PUD process.



**Development
Regulations**



Commercial Linkage

Requiring new commercial development to provide housing for a portion of the demand generated by on-site employment would broaden responsibility for workforce housing. Commercial linkage fees help to address housing needs that increase as a result of new job-generating commercial development. A nexus is needed to quantify the number of jobs created. Concerns include:

- The need to build upon success with implementation of other tools to gain business support.
- Economic seasonality in Whitefish, which makes it difficult for many businesses to succeed.
- Potentially rendering commercial development financially less feasible.
- Pushing businesses into the county or Columbia Falls.

Implementation Recommendations

- Commercial linkage should be considered between 2021 and 2015.
- Conduct a nexus study.
- Before considering commercial linkage, developers should be allowed to build housing as part of currently zoned commercial developments. All commercial development should have an exemption for some of the square footage to be developed so that small projects are viable; the threshold for the exemption to be determined.



**Development
Regulations**



Residential Linkage

Residential linkage requires new homes to contribute to workforce housing relative to housing demand generated by residential units. In contrast to IZ and annexation, residential linkage would apply to lots that are already subdivided. A nexus study is needed.

Potential within Whitefish boundaries is significant: there are 326 platted residential lots under .5 acres in size. Assuming the average home size is 2,750 SF, the mitigation rate is 20%, and the fee in lieu is \$150,000 per unit, residential linkage program should produce approximately \$1 to \$1.5 million in fees/year. Concerns include making it more difficult for locals to afford to build their own homes, and adding to already high impact fees.

The City is reviewing its impact fee schedule and may be able to eliminate some of the older fees that have not accomplished their purpose. A residential linkage fee for workforce housing might be more acceptable to community if other fees are eliminated.

Implementation Recommendation

- Residential linkage should be reconsidered between 2021 and 2015, and should take into consideration the outcome of the current fee review and update process.
- Conduct a nexus study.



**Development
Regulations**





Tier 3 Strategies

These strategies may become part of Whitefish's workforce housing efforts in the future but, given sequencing considerations, funding and land availability, current community priorities, and Montana statutory authority, these strategies are now scheduled for implementation after 2025. When this plan is updated in 2020, these strategies will be reconsidered.

Opportunities for Tiny Homes

No-Net Loss Policy

Density Bonuses

Raising Funds through Special Events

Fast Track Processing

Acquisition of Market Units

Self Help Build

Fee Waivers

Property Management

Habitat for Humanity

Co-op or Co-Housing

Public Sector Development

Senior Housing

Section 8 Rent Subsidies

Taxes

Debt Financing with Favorable
Terms

Private Donations/Grants

Relocatable Housing

Impact Fees

Supporting Tools

The following tools have been combined within Tier 1 and 2 strategies:

- Tax Increment Financing (TIF)
- Federal and state Grants
- General funds
- Deed restrictions without income/price restrictions
- Tax breaks for affordable housing

Complementary Strategies

STR Compliance and Regulations

Communities are responding to the rapid proliferation in residential short-term rentals (STR's) with new/modified regulations in part due to the industry's impacts on workforce housing supply and demand. Regulations may include prohibiting short-term rentals in certain zones, especially where the workforce resides, limiting the number in defined areas by zone or block, limiting the right to short-term rent to local residents and prohibiting short-term rental of deed restricted housing. Since the issues associated with STR's are broader and more far reaching than workforce housing (neighborhood impacts, safety, revenue, etc) the following strategy is a complementary part of this *Whitefish Strategic Housing Plan*.

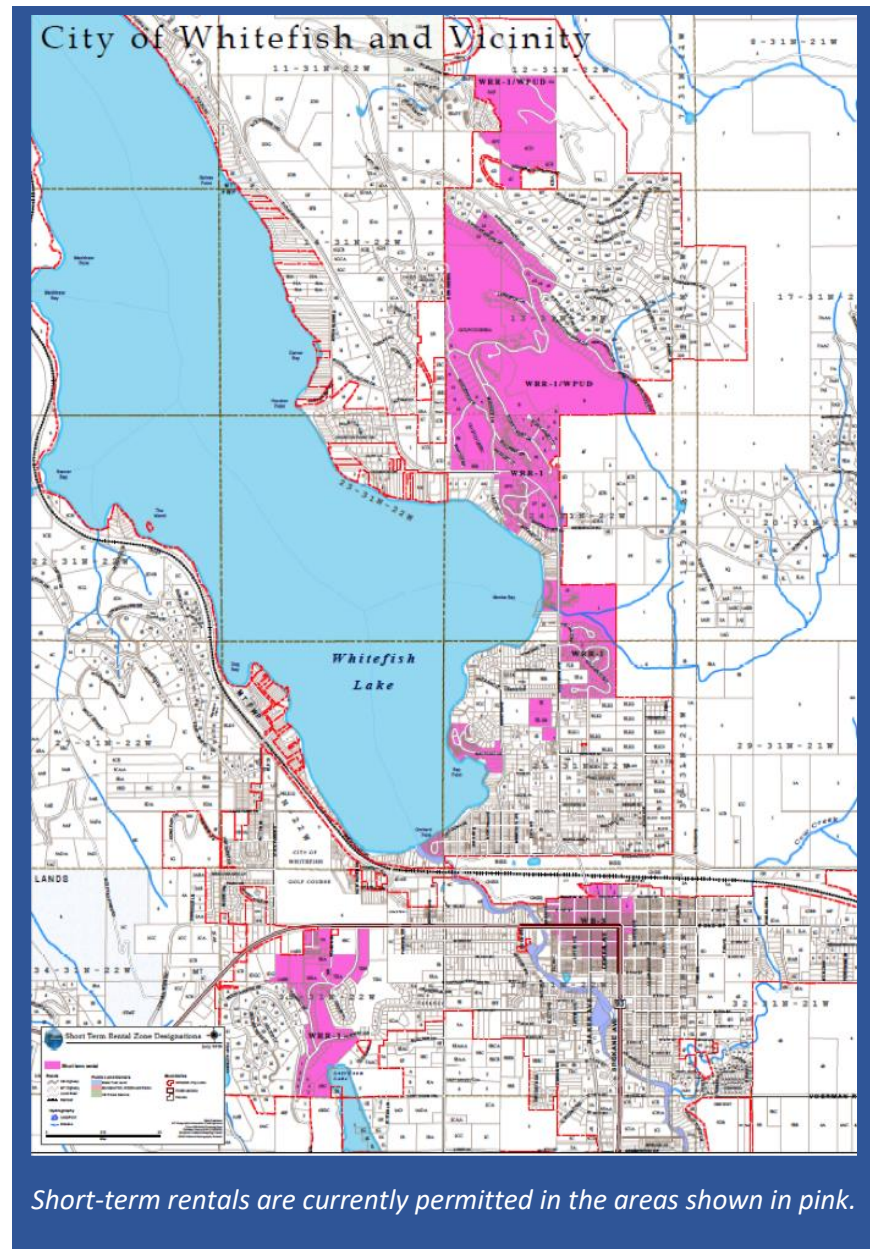
For a 6-month period ending in Spring 2018, the City will focus on compliance with existing regulations before consideration of changes. Efforts are to include:

- Making STR compliance a priority for the new full-time code enforcement officer.
- Tracking online listings once weekly.

- Publishing a newsletter to educate the public, second home owners, realtors and property managers on permit/license/inspection requirements.
- Seeking voluntary compliance through outreach.
- Encouraging complaints about violations and responding to those complaints.
- Creating an online map showing the location of all permitted short-term rentals.
- Establishing a database.
- Purchasing AirDNA report (\$60) for data on number of units, number of individually-rented bedrooms, top performing addresses, rents and occupancy rates.
- Determining the cost of short-term rental licensing, permitting, inspection, complaint resolution, compliance.
- Comparing costs to revenues derived (staff).
- Determining where accessory dwelling units and short-term rentals are both allowed.

After the 6-month period, the City will evaluate information derived from compliance with existing regulations and consider:

- Increasing permit and license fees to fully cover short-term rental compliance costs; make sure fines are adequate.
- Contracting for tracking services.
- Enhancing coordination among oversight agencies – City, Fire, County, State.



- Allowing short-term rentals in additional areas only upon neighborhood request.
- Incorporate short-term rental prohibitions in accessory dwelling unit implementation.
- Working with Montana legislature to preserve the rights of municipalities to regulate STR's.

New Tax Increment Financing District

A new tax increment financing district could be created to undertake economic development projects and infrastructure improvements. While workforce housing could also be an allowable use of revenues produced, as is the case with the existing downtown TIF district, it will be a complementary rather than primary purpose of the new district. To implement this strategy:

- Study and prioritize potential for additional TIF districts when the current one expires in 2020 – new potential districts: Baker Avenue South, Highway 93, Railway and west of 93, north of railway – Iowa and Wisconsin, north of Piccolo, the gravel pit and any additional blighted areas.
- Seek opportunities to create public private partnerships and build additional workforce housing in new districts.

Roles & Responsibilities



City of Whitefish

The City will both enhance existing services and grow its expertise and capacity to assume lead responsibility for implementation of the *Whitefish Strategic Housing Plan*. A full-time Housing Coordinator (see below) will be hired to join the City Manager, planners, code enforcement, GIS and finance staff to implement this plan.



Whitefish Chamber of Commerce

The Whitefish Chamber of Commerce will continue its instrumental role in public awareness, education and participation, and coordination with employers. Key tasks will include providing coordination and technical assistance until assumed by the City's Housing Coordinator, and launching a new Voluntary Assessment to encourage the business and broader community to contribute to workforce housing in Whitefish.

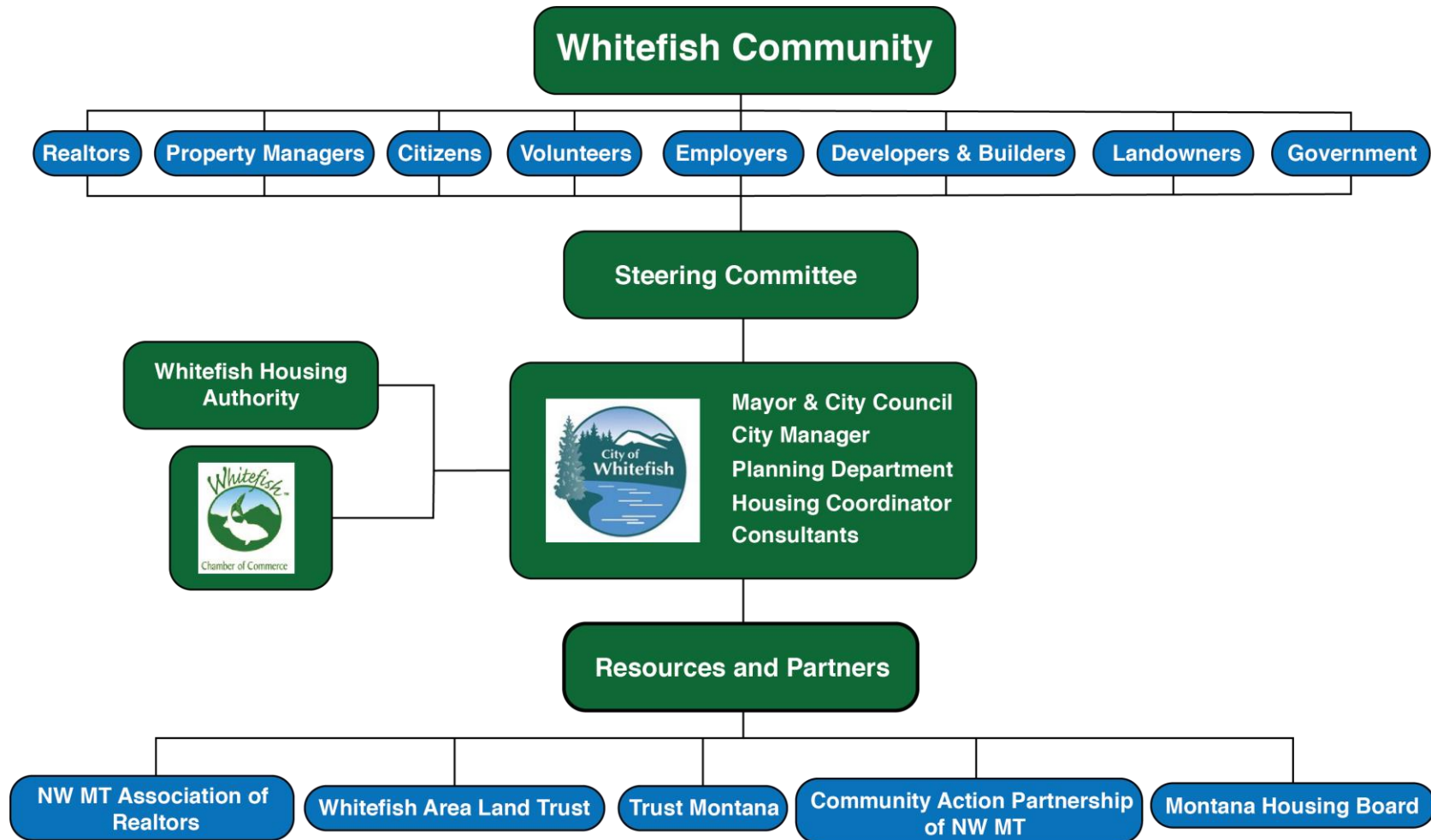
Whitefish Housing Authority

The Whitefish Housing Authority with its sister organization, the Whitefish Area Land Trust, will continue and expand the services and programs it has historically provided and may take on new responsibilities over time. WHA needs to expand its capacity to increase the number of households assisted, units managed and programs simultaneously operated. Preparing grant applications, accessing regional and state resources, supporting the development of core components and implementing priority strategies will require additional staffing or use of contractual services.

Compatibility, community ownership and support, communication/coordination, capacity, expertise, clear responsibilities, funding, fairness and political will are key to the success of this Strategic Housing Plan.

Recipe for Successful Workforce Housing Plans
Whitefishhousing.com

Organizational Chart



Responsibilities for Strategies and Core Components

		Whitefish Housing Authority
<p>Lead</p> <ul style="list-style-type: none"> Snow Lot Annexation Policy Inclusionary Zoning Resort Tax Zoning for Affordability Public Land Capacity/Expertise Deed Restrictions Guidelines 	<p>Lead</p> <ul style="list-style-type: none"> Voluntary Assessment Public Education, Awareness & Participation 	<p>Lead</p> <ul style="list-style-type: none"> Homebuyer Assistance Housing Rehabilitation Inventory Database
<p>Support</p> <ul style="list-style-type: none"> Homebuyer Assistance Housing Rehabilitation Inventory Database 	<p>Support</p> <ul style="list-style-type: none"> Capacity/Expertise 	<p>Support</p> <ul style="list-style-type: none"> Capacity/Expertise Deed Restrictions Guidelines Public Education, Awareness & Participation Inventory Database
<p>Major Tasks</p> <ol style="list-style-type: none"> 1. Hire and oversee Housing Coordinator 2. Form Partnerships with developers/builders 3. Utilize consultants for Inclusionary Zoning, Guidelines and other tasks. 4. Address STR Compliance 5. Form new TIF District 6. Provide TIF, General Funds, Land 	<p>Major Tasks</p> <ol style="list-style-type: none"> 1. Enhance and maintain WhitefishHousing.com 2. Communicate regularly with business and broader community about workforce housing 3. Chair the Steering Committee initially 4. Publicity 5. Technical assistance to employers 	<p>Major Tasks</p> <ol style="list-style-type: none"> 1. Manage deed restrictions over time 2. Screen/qualify applicants for ownership and rental housing 3. Work with the CAPNW & other partners 4. Pursue CDBG/LHTC/federal/state funding 5. Manage Mountain View Apartments 6. Manage Section 8 rent subsidy vouchers 7. Consider management of Snow Lot units 8. Input into Inventory Database

Strategic Housing Plan Steering Committee

A Steering Committee will be appointed immediately to review and advise as strategies are developed and enacted. This Committee will include members of the Task Force that worked to create the *Whitefish Strategic Housing Plan*, capitalizing on the experience and expertise gained during the process of analyzing the various tools and deciding how they should be worked into viable, appropriate and comprehensive strategies.

Responsibilities:

1. Recruit members from Task Force and community at large
2. Convene initially to fine tune responsibilities and establish procedures
3. Meet monthly or as needed
4. Appoint ad hoc or sub committees as needed
5. Liaison with Housing Coordinator
6. Report to City Council
7. Assist in plan update in 2020

Housing Coordinator

The Task Force unanimously recommends hiring a full-time, mid- to upper-level staff member with expertise/experience in workhouse housing project development and programs. The City Manager will determine how the City's responsibilities are to be assigned and shared with existing staff. The title of the position is to be finalized when the job description is drafted. Suggestions include Housing Coordination, Housing Manager, and Housing and Economic Development Director. The position is to be funded with TIF, cost sharing with businesses and possibly general funds. Strong communication, organization, finance, development and land use experience are needed.

Legal Analysis

There is little case law in Montana related to the strategies within the *Whitefish Strategic Housing Plan*.

Nationally, the more common legal challenges involve land use policies that demand exactions and fees from development to mitigate for the impacts of the development. This is governed by federal “exactions” law established by three U.S. Supreme Court cases.¹ Such exactions are not part of the Tier 1 strategies, however.

Inclusionary zoning is part of Tier 1, but a recent California Supreme Court decision found that the rigorous standard imposed by federal “exactions” law does not apply to mandatory inclusionary zoning policies.² The U.S. Supreme Court denied the petition to challenge this ruling, meaning that federal law does not restrict the ability for communities to use its zoning power to adopt mandatory inclusionary zoning.

Regarding some of the other strategies, there were three outstanding legal questions, which are discussed below:

1. Is rent control prohibited in Montana?
2. Can deed restrictions be permanent in Montana?
3. Can deed restrictions be limited to “locals only” and/or location of employment?

The below presents our review of relevant statutes and case law in Montana, combined with our knowledge of similar issues in other states in which we have consulted. It is intended to be informative and present potential options for consideration.

¹ See *Nollan v. Cal. Coastal Comm'n*, 483 U.S. 825 (1987); *Dolan v. City of Tigard*, 512 U.S. 374 (1994); and *Koontz v. St. Johns River Water Management District*, 133 S.Ct. 2586, 570 U.S. __ (2013).

² *California Building Industry Association v. City of San Jose*, 351 P.3d 974 (Cal. 2015).

PLEASE NOTE (DISCLAIMER): the below does not constitute legal advice. We are not licensed attorneys in the state of Montana. It is recommended that a state licensed attorney be consulted if any of the below is pursued.

1. Is rent control prohibited in Montana?

Answer: Rent control is not prohibited in Montana.

Analysis: There is no Montana State Statute that prohibits rent control. Nor does any community impose rent control.

If rent control becomes more common, it is possible the state legislature may take the path of Colorado (rent control prohibited) or California (rent control limited; “vacancy decontrol”). This should be kept in mind when considering either rent control ordinances or inclusionary zoning requirements that may trigger rent control issues. *See, e.g., Town of Telluride, CO v. Lot Thirty-Four Venture, L.L.C.*, 3 P.3d 30 (Colo. 2000); *Palmer/Sixth Street Properties, L.P. v. City of Los Angeles*, 175 Cal.App.4th 1396 (Cal. Ct. App. 2d 2009). Helping to incentivize or subsidize units or providing affordable rentals as part of development agreements in exchange for concessions are common approaches in rent control-limited states.

2. Can deed restrictions be permanent in Montana?

Answer: Possibly. If, however, deed restrictions are not limited by a term of years, caution must be used and several factors must be considered.

Analysis: Legal council to the Whitefish Housing Authority has recommended that deed restrictions not extend beyond 90 years. This is based on § 72-2-1002, MCA, statutory rule against perpetuities. This is not uncommon. The rule against perpetuities is of concern in many states regarding the permissible permanence of deed restrictions (*See, e.g., Alfaro v. Community Housing Improvement System & Planning Assn., Inc.*, 171 Cal.App.4th 1356 (2009)).

Several cases in the Supreme Court of Montana have explored restraints against the alienation of property as related to rule against perpetuities, both before and after § 72-2-1002, MCA, became part of the code. *See, e.g., Edgar v. Hunt*, 706 P.2d 120

(Mont. 1985); *Baker v. Berger*, 873 P.2d 940 (Mont. 1994); *Urquhart v. Teller*, 958 P.2d 714, 717-718 (Mont. 1998) (stating that whether a deed restriction may be of perpetual duration is only one factor of many that needs to be considered when determining the reasonableness of any constraint); *Scott v. Lees & Donna Metcalf Charitable Trust*, 358 P.3d 879, 884 (Mont. 2015) (“... despite the relatively broad language of § 72-2-1002, MCA, the rule does not apply to all nonvested property interests. Section 72-2-1005(1), MCA, states that ‘Section 72-2-1002 does not apply to: (1) a nonvested property interest . . . arising out of a nondonative transfer.’”).

Many factors may be considered when determining the reasonableness of any particular restraint, including whether the restraint is of perpetual duration.³ Many communities avoid this issue by placing a term or other limit on deed restrictions, such as the 90-year limit recommended to the Whitefish Housing Authority. Given review of the above statutes and case law, other options (or a combination thereof) may be available. For example, public subsidy or concessions upon development of deed restricted units, language indicating the restriction is in place only so long as beneficial (*see, e.g., Alfaro*, 171 Cal.App.4th 1356 (2009)) or similar options.

3. Can deed restrictions be limited to “locals only” and/or location of employment?

Answer: It appears that deed restrictions can be limited to locals only and/or location of employment, but it is advisable to define more specifically what “locals” means (e.g. Bozeman requires buyers of deed restricted homes to occupy the home as their “primary residence” (Bozeman Municipal Code § 38.43.150)).

Analysis: Federal and state fair housing laws prohibit discriminatory practices in any industry-related business or transaction that may affect the ability of *protected class members* to secure housing and/or live in the housing of their choice. Protected classes are defined both by the federal Fair Housing Act and Montana Human Rights Act. Protected classes in Montana include:

³ If the person imposing the restraint has some interest in land which he is seeking to protect by the enforcement of the restraint and if the enforcement of the restraint accomplishes a worthwhile purpose, the restraint is more likely to be reasonable. *Edgar*, 706 P.2d at 122 (citing Restatement of Property § 406 cmt. i). Courts may review the type of price set by the restriction, intent of the parties, purpose of the restraint/public policy to be achieved, existence of mutual consent, among other factors. See *id.*

Federal Protected Classes

Race
Color
National Origin
Religion
Sex
Familial Status
Disability

Montana Human Rights Act

Creed
Marital Status
Age

Local jurisdictions may have non-discrimination ordinances that provide additional protections. The City of Whitefish also includes ancestry, sexual orientation and gender identity and/or expression as protected classes.

Local residents and location of employment are not protected classes subject to fair housing protections.

In line with this, the City of Bozeman requires a deed restriction to be placed on affordable homeownership units constructed through their inclusionary zoning ordinance. The deed restriction requires purchase by a household that will occupy the home as their “primary residence.” Bozeman Municipal Code § 38.43.150.

Follow Up

Adoption

The governing boards of the Whitefish Chamber of Commerce and Whitefish Housing Authority will acknowledge acceptance of the responsibilities assigned to them in the plan in letters to the Whitefish City Council. The City Council will schedule adoption of this plan, a crucial first step in its implementation, in November.

Tracking Progress

The Steering Committee will periodically assess progress on implementation of this *Whitefish Strategic Housing Plan*. Strategies will be moved forward on the timeline if opportunities arise and capacity to respond exists.

Updating

Comprehensive updating will be done by the end of 2020. Census data will be used to measure how 2000 through 2010 trends may have changed between 2010 and 2020. Residential market conditions will also be reviewed at that time. Goals, objectives and strategies will be adjusted in response to changing conditions.